Supreme Court, U.S.
FILED
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No.

IN THE

Supreme Court of the United States

MICHAEL VINCENT LATINO

Petitioner

v.

STANISLAUS COUNTY, CALIFORNIA, ET AL.,

Respondents

On Petition For Writ Of Certiorari
To The United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

MICHAEL VINCENT LATINO
PRO SE
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Questions Presented for Review – a brief Introductory Statement

The Fourteenth Amendment permits Frances and her grandson, Michael (this Petitioner) to in fact live together in their own California home. The Respondents in this case banded together to use Cal. Probate Codes §§ 2355(a) and 4615, under color of state law, to impose upon *both* Frances, *and* her grandson, Michael (this Pro Se) the condition of an "indefensible entrapment" to permanently separate Frances, and Michael, from each other, and then, 69 days later, to put to death Frances Helen Latino, SSN 358-10-1076, through the pathway of neurochemistry, without due process of law.

Questions Presented for Review

(1) Is Cal. Probate Code § 2355(a), "Medical treatment of conservatee adjudicated to lack capacity to make health care decisions," repugnant to the due process clause of the Fourteenth Amendment?

(2) Is Cal. Probate Code § 4615, definition of "Health care," repugnant to the due process clause of the Fourteenth Amendment?

(3) Do the elderly and all younger U.S. citizens, who have inherently theonomous medical histories and conditions that are *not* premeditated by their family or private care provider, *and* their family or private care provider, have a Fourteenth Amendment (Section 1) protected right to remain, and then die, with such medical histories and conditions, in their own home or domicile, or hospital, still under the *direct control* and with mutual association of the family or private care provider, as

opposed to State intervention which frames collaterally the family or private care provider *and* the patient "under color of state law," and then seizes and puts in an institution the elderly or younger patient?

Question (3) simplified: Is the State to be enjoined that it is *not* to exploit and mischaracterize the medical conditions of its citizens, "under color of state law"?

PARTIES TO PROCEEDING

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J. Douglas Van Sant & Orlie L. Curtis
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(209) 478-2000
Representing: Respondent Stanislaus County;
Respondent Stanislaus County Public Guardian;
Respondent Charles Grom, Stanislaus County;
Respondent Denise C. Hunt, Stanislaus County;
Respondent Diane Guerra, Stanislaus County;
Respondent Stacey Winklepleck, Stanislaus County;
Respondent Paulette Roberts, Stanislaus County;
Respondent Jose Michel, Stanislaus County;
Respondent Phyllis Sarasqueta, Stanislaus County

PARTIES TO PROCEEDING

Pro Se, Michael Vincent Latino, also names the following Stanislaus County Agents/Employees as Respondents:

Respondent Judge A. Girolami, The Probate Court Judge
Superior Court of California, Stanislaus County
800 11th Street
Modesto, California 95354

Respondent Court Investigator, Case Number 150348-5,
Stanislaus County &
Respondent Court Investigator, Case Number 220168,
Stanislaus County
Superior Court of California, Stanislaus County
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Modesto, California 95354

Respondent G. McDaniel, Stanislaus County
Sheriff's Department, Stanislaus County
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(209) 525-7083

Respondent Debra Buckles, Stanislaus County
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PARTIES TO PROCEEDING

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Representing: Respondent Tri Minh Pham, M.D.

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1661 Garden Highway, Suite 100
Sacramento, California 95833
(916) 929-9600
Representing: Respondent Doctors Medical Center;
Respondent Employees of Doctors Medical Center,
Including Respondent S. Veia, R.N.,
Fourth Floor, Nurse Station for Frances Helen Latino's
Room, Room Number 457

Peter Gary Cassel
Six South El Dorado, Suite 601
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Representing: Respondent Laurie Dawson, M.D.

Lawrence E. Wayte
Five River Park Place East
Fresno, California 93729
(559) 433-1300
Representing: Respondent Lisa Crenshaw;
Respondent Debbie Babb;
Respondent Interim Health Care, Modesto, California

David Fernando Beach
100 Stony Point Road, Suite 185
Santa Rosa, California 95401-4145
(707) 547-1690
Representing: Respondent Modesto Convalescent
Hospital, Modesto, California;
Respondent Peggy Cauble

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People v. Brust,
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People v. Weatherford,
27 Cal.2d 401, 164 P.2d 753 (1945) — Page 17

Schware v. Board of Bar Examiners,
353 U.S. 232, 1 L.Ed.2d 796 (1957) — Page 4

FED. RULES CIV. PROC. RULE 15(c),
28 U.S.C. — Page 3

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Citations of the Court Orders

No. 04-71220, United States Court of Appeals for the Ninth Circuit: Filed June 21, 2004. *See* Appendix, page A.
No. 03-72381, United States Court of Appeals for the Ninth Circuit: Filed July 29, 2003. *See* Appendix, page B.
D.C. No. CV-00-06745-LJO: Filed February 11, 2003, Eastern District of California, Fresno. *See* Appendix, pages C, D, and E.

Jurisdiction

No. 04-71220, Filed June 21, 2004; *See* Appendix, page A. Statutory provision: Federal questions – are Cal. Probate Codes §§ 2355(a) and 4615 repugnant to the due process clause of the Fourteenth Amendment? Also 28 U.S.C. § 1254: "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;" Also FED. RULES CIV. PROC. RULE 60. "Relief From Judgment or Order .... (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc." 28 U.S.C.; *See* Appendix, page F.

On its face, Supreme Court Rule 29.4(c) does not align with the circumstances of this case, since an "agency" of the State and its employees *are* Respondents, nevertheless, the Attorney General of the State and the Governor of the State have been served. This is the very first instance that the constitutionality of the Probate Codes are raised; the Ninth Circuit (04-71220) declined to adjudicate Cal. Probate Code § 2355(a) and Cal. Probate Code § 4615 that is referenced to by 2355(a).

The opinions of the District Court (CV-00-06745-LJO) *do not fairly represent* what actually happened. Former Attorney of Petitioner, Stephen Solano, California State Bar Number 80692, *and* the District Court Judge, erred when they permitted James Mervis, Professor of Geriatrics, to determine that Petitioner's 42 U.S.C. § 1983

claim should not go to trial. *Both* the former Attorney of this Petitioner, *and* the District Court Judge, *failed to establish* that James Mervis, Professor of Geriatrics, has the power vested in himself to annul the due process clause of the Fourteenth Amendment, of the Constitution of the United States.

Civil Rights – deprivation elements of civil action: Under 42 U.S.C. § 1983, which provides a civil action for the deprivation of civil rights, two elements are necessary for recovery: The plaintiff must prove that the defendant has deprived him of a right secured by the "Constitution and laws" of the United States, and that the defendant deprived him of this constitutional right "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory"; this second element requires that the plaintiff show that the defendant acted "under color of law." *See Monroe v. Pape,* 365 U.S. 167, 228, 81 S.Ct. 473 (1961):

> That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, *any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding,* be liable to the party injured
>
> . . . .

Also on Petitioner's part, there was no consent to a "consent judgment." Former Attorney of Petitioner, by himself, engaged in "parties' stipulations" without the involvement of his client (this Petitioner), in direct violation of California's Business and Professions Code § 6103.5(a); *See* Appendix, page G. The dismissal of this case is *not* voluntary, and Petitioner *never* agreed to a dismissal of his case with prejudice! Petitioner *never* consented to the dismissal of Case No. CV-F-00-6745-LJO, and Petitioner *never* consented to the dismissal of

any of the Defendants or any related "certain claims and damages," and Petitioner always found out about such aforementioned transactions *after* the execution of each and every fact thereof, and thus, there should *not* be a "claim preclusion" nor an "issue preclusion" concerning Petitioner's case. *See Arizona v. California,* 530 U.S. 392, 412-413, 147 L.Ed.2d 374, 395 (2000):

> Where no judicial resources have been spent on the resolution of a question, trial courts must be cautious about raising a preclusion bar *sua sponte,* thereby eroding the principle of party presentation so basic to our system of adjudication.

See Arizona v. California, 530 U.S. at 414, concerning "claim preclusion" and "issue preclusion."

See FED. RULES CIV. PROC. RULE 15(c), 28 U.S.C.: Relation Back of Amendments. An amendment of a pleading relates back to the date of the original pleading when

(1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or

(2) the claim of defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

....

Defendants were dismissed on the date of June 18, 2002, and Pro Se (Petitioner) did not know of said dismissals (at that particular time/date) until the date of February 11, 2003; and concerning the Defendants that

were dismissed on the date of October 29, 2002, these dismissals were in fact done without the consent of this Petitioner – Petitioner found out about the total consummation of his lawsuit *after* the actual "Act" had occurred, later on that day. *See* FED. RULES CIV. PROC. RULE 60(b), 28 U.S.C., Appendix, page F.

DISCUSSION

Former Attorney of this Petitioner was never able to "crystallize" Petitioner's case and to identify Cal. Probate Codes §§ 2355(a) and 4615 that were used to, not only to subject Frances Helen Latino (the grandmother) to human experimentation and then to put her to death, "under color of state law," but these two codes, by the very nature of being used against Frances, thus also continuously and simultaneously impacted *against* the grandson, Michael (this Petitioner) to destroy *his* occupation of taking care of his grandmother (Frances), and to destroy *his* family life and mutual association with Frances (who did not want to go to, or remain in any type of nursing home); thus the destruction of family life and occupation is *also* "under color of state law," through the overbreadth of these two Codes. Thus, the deprivation of civil rights was collaterally inflicted upon, *not only upon* Frances, but *also,* upon the (sole) survivor, Michael, through the instrumentalities of these two Probate Codes, §§ 2355(a) and 4615, and this is the core of Petitioner's 42 U.S.C. § 1983 claim, along with the overbreadth of these two Codes which condemns no act or omission on the part of the (nonrelative) conservator, and thus, these two Codes must be condemned as being repugnant to the due process clause of the Fourteenth Amendment. *See Schware v. Board of Bar Examiners,* 353 U.S. 232, 238-239, 1 L.Ed.2d 796, 801 (1957):

> A State cannot exclude a person from the practice of ... any ... occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment.

Frances Helen Latino was born in Chicago, Illinois, on May 20, 1904, County of Cook, and Michael Vincent Latino (the grandson and this Petitioner) was born in Melrose Park, Illinois, on May 3, 1950, County of Cook. *See* the Constitution of the United States, Fourteenth Amendment [1868] Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

See the the Constitution of the United States, Article VI, Clause 2, "supreme Law of the Land":

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

California's Probate Code § 2355(a) was used against noncontagious, and at that time, not sick, Frances Helen Latino, by August 6, 1999, conservatorship Case Number 220168, Stanislaus County, and said Probate Code, in conjunction with Cal. Probate Code § 4615, facilitated the premeditated death of Frances, by Respondent Diane Guerra, Respondent Tri Minh Pham, M.D., Respondent Doctors Medical Center, Modesto, California, and Respondent Employees of Doctors Medical Center, fourth floor, nurse station for Frances' room, room number 457: To make absolutely certain that Frances would die on the day of Tuesday, October 12, 1999, the Respondents did *not* counteract Frances' recorded low blood pressure values of 87/55, at

0800 hours, and then Frances was intravenously given morphine at 0915 hours, through the instrumentality of S. Veia, R.N., even though the morphine is a known respiratory depressant and a known venodilator, that can cause, in itself, a decrease in systemic blood pressure. By 1240 hours Frances' recorded blood pressure was a critically low 67/35 and the Respondents did *not* counteract Frances' critically low recorded blood pressure values of 67/35, by using inotropic dobutamine hydrochloride, or by using inotropic and chronotropic norepinephrine, or by using inotropic and chronotropic dopamine, to thus increase Frances' blood pressure and to thus increase oxygen delivery to Frances' critical brain, heart, and diaphragm – and thus Frances was dead by approximately 1302 hours, and this Petitioner (Frances' grandson) was kept away from his grandmother (Frances) by a counterfeit restraining order that had been fabricated and maintained by the Respondents. *See Howlett v. Rose,* 496 U.S. 356, 371, 110 L.Ed.2d 332, 350 (1990):

> An excuse that is inconsistent with or violates federal law is not a valid excuse: the Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source.

California's Probate Code § 2355(a) – "... whether or not the conservatee objects.... and no person is liable ...." – is facially invalid (violative) under the United States Constitution Amendment XIV [1868] Section 1:

> .... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ....

(regardless of/immaterial what *others* perceive the conservatee's intelligence or insights to be!)

California's Probate Code § 2355(a), and Cal. Probate Code § 4615, are *not content specific codes*, they are *not* narrowly tailored, and they do *not* even

differentiate the conditions of contagious and noncontagious, and therefore California's Probate Codes §§ 2355(a) and 4615 do *not* survive strict scrutiny and therefore they do *not* serve any compelling or well delineated State interest.

AMPLIFICATION OF ARGUMENT

Knowledge is *not* power. "Knowledge is only *potential* power. It becomes power only when, and if, it is organized into definite plans of action and directed to a definite end."[1]

When Frances was seized by Stanislaus County Employees on August 4, 1999, there were fundamentally three things wrong with Frances:

(1) Frances had lost some neuromuscular junctions in the forward part and lower part of her heart because of a 1973 thrombi;

(2) Frances had lost some of her motor neurons in a central part of her brain because of stroke accidents in 1997 and January 2, 1999;

(3) Frances had the normal diminution of enzymatic activity because of her age, especially in her dermis structures.

There is *not* a hospital, doctor, nurse, *nor* medical entity, *nor* state probate code, on the face of this planet, that can do anything to reverse the medical conditions that Frances had, *which are typical of old age. Concurrent (concomitantly)* with such medical conditions, Frances, in 1999, then developed a pressure ulcer on her left hip, and a pressure ulcer on her right hip, and a pressure ulcer on her coccyx (which was in the process of healing when Frances was seized). As late as May 4, 1999, Respondent (county nurse) Phyllis Sarasqueta did not think that Frances needed low air loss therapy. At this point it became apparent to this Petitioner that the Respondents, and the medical profession at large, are very, very stupid

[1] [DR.] NAPOLEON HILL, THINK AND GROW RICH 75-76 (Fawcett World Library 1960).

when it comes to pressure ulcers; they, including probate court judges, all think that all one has to do is just force more protein into the person, and just turn them every one to two hours and then the pressure ulcers will go away. Because of such abject "minds" Frances was subjected to forced feeding, "under color of state law" and then was put to death within 69 days "under color of state law" through the instrumentalities of Cal. Probate Codes §§ 2355(a) and 4615, with her three pressure ulcers being more deteriorated (in part because Frances was afraid of the Respondents which put her into a neuroendocrine response that caused her to shunt blood from her dermis structures which can be extrapolated from her drop of body temperature that occurred after she was seized by the Respondents).

"Under color of state law" Respondent Charles Grom arrested this Petitioner and charged him with Cal. Penal Code § 368, "Crimes against elder or dependent adults," on August 23, 1999, but not one Respondent, *not even the examining doctor* on the day of August 4, 1999, Respondent Laurie Dawson, M.D., could state, or ever did state, *just exactly what anatomical system or systems did Michael Vincent Latino damage or undermine or impair – on his grandmother, Frances.*

See Appendix, page H: The "Complaint – Criminal" is gibberish; "to suffer" in what manner or way, and "did inflict" just exactly what? *See Bouie et al. v. City of Columbia,* 378 U.S. 347, 350-351, 84 S.Ct. 1697, 1701 (1964):

> The basic principle that a criminal statute must give fair warning of the conduct that it makes a crime has often been recognized by this Court.... 'The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.'

Said "Complaint – Criminal" is supporting a State (action) sanctioned scam operation "under color of state law" through the instrumentalities of Cal. Probate Codes §§ 2355(a) and 4615, and Cal. Penal Code § 368, and this State (action) sanctioned scam operation that destroys family life *then* is used by the State of California to put to death *any* of their victims that become too much trouble for them to maintain, as these Respondents *did to* Frances Helen Latino, SSN 358-10-1076, on the day of October 12, 1999.

All Respondents, including the Probate Court Judge, Judge A. Girolami, failed to submit Affidavits that they had not been in connivance with each other to test *their own* health care views *on Frances' body* even if this would make Frances sick, "under color of state law" (and the Respondents *did* get Frances sick with pneumonia and sepsis by September 13, 1999) and that they had not been in connivance with each other "under color of state law" to keep Frances and Michael apart from each other and to destroy their family life, and that they had not been in connivance with each other to have Frances put to death.

Unless the alleged conspirators foreclose the possibility of a tacit agreement from which a conspiracy can be inferred, the Defendants are not entitled to Summary Judgment: *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157-158, 90 S.Ct. 1598, 1608-1609 (1970).

On May 7, 1999, on his own initiative, Petitioner bought for Frances a low air loss mattress system, "Orthoderm Elite," model number 350753, cost $4,200.00, excluding the State sales tax, the best mattress that Petitioner could buy for Frances, who was by that time bedridden as a result of the January, 1999 stroke. The mattress was placed on a hospital bed (placed in the master bedroom) that Petitioner had bought in January, 1999. Petitioner was able to move his grandmother around their home by himself because he had bought in January, 1999, a special hydromechanical lift that has a special seat. Frances, who was a food expert, had already

taught Michael how to cook, and what to feed her. Petitioner did not work outside their home, and he was not looking for any outside employment. Frances and Michael had their own "Durable Power of Attorney for Health Care" that at least some of the Respondents were aware of (Tri Minh Pham, M.D.; Lisa Crenshaw) since July 29, 1998. There was nothing wrong with the home that Frances and Michael lived in when Frances was seized, which was built in 1996 (not even a light was burnt out). The automobile of Frances and Michael was in driving condition when Frances was seized.

Frances had kept Michael out of an orphanage in 1954, where there would be no love for him, and now, it was Michael's turn to keep his grandmother, Frances, out of a nursing home, where there would be no love for Frances.

Pressure ulcers (and easy bruising) are not the result of a care provider's premeditated unlawful act or conduct, but rather, they are a medical condition that the patient has, *not* to be mischaracterized as being caused by an unlawful act by the care provider, and thus framed by employees of the state or county "under color of state law," as was done in this case using Cal. Probate Codes §§ 2355(a) and 4615.

Given the blood circulatory, immobility, and enzymatic systems variables of one patient compared to another patient, that care providers cause pressure ulcers is not tenable, and only leads to unwarranted speculation that is blind to the nuance of the patient's individual cardiac ejection fraction, totality of neuronal and neuromuscular junction loss that has been caused by a thrombi or embolism, and enzymatic systems that are characterized by geriatric impetus valence shifts from optimal. Frequent turning of a pressure ulcer patient will not eliminate repeated vascular insults and forced feedings of protein will not reactivate inactive enzymatic systems. The medical profession is exacerbating the pressure ulcer problem by not advising and by not having *all* bedridden patients on low air loss therapy, if

they are age 70 or older, *before* the outer skin breaks! The cost of such a system is about $5,000.00 and cost about $25.00 a month to operate. The cost of just one pressure ulcer if the patient is forced into a hospital is at least $70,000.00 (and the pressure ulcer(s) may not heal – as in this case) up to the ultimate cost of a nonrelative conservator overseeing the patient (conservatee) being put to death after the nonrelative conservator fails in the performance of his or her duties, as was done to Frances Helen Latino, SSN 358-10-1076, without due process of law.

Cal. Probate Code § 2355(a) is vague in the sense that no *(final)* standard of conduct is specified at all, (towards the conservatee) and thus, it is unconstitutional on its face, because men of common intelligence must necessarily guess at its meaning, and, without due process of law, thus "allows" the conservatee's life to be terminated, at the whim of the nonrelative conservator.

Cal. Probate Code § 2355(a) is repugnant to the due process clause of the Fourteenth Amendment because of its vagueness and uncertainty as to just exactly *what* anatomical conditions or diseases of the conservatee are to be manipulated or subjected to treatment, and in what manner, and then what is to be the disposition of the conservatee, by the conservator, when any such "treatment" of the conservatee fails (in this case the nonrelative conservator broke faith and oversaw/condoned the death of the conservatee, Frances Helen Latino).

The challenged provision, Cal. Probate Code § 2355(a), condemns no act or omission on the part of the (nonrelative) conservator, and thus, it must be condemned as being repugnant to the due process clause of the Fourteenth Amendment. The terms it employs to indicate what it purports to promote are extremely vague ("medical advice" that may come from any bias source and not know the conservatee's true condition, as what happened in this case). Such laws, in the past, have been struck down by the United States Supreme Court

because of their indefinite and uncertain character: *See* for example *Lanzetta et al. v. State of New Jersey*, 306 U.S. 451, 458, 59 S.Ct. 618, 621 (1939).

> And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.

Lanzetta, 306 U.S. at 453.

Stare Decisis.

Cal. Probate Code § 4615, "Health care," which states " 'Health care' means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a patient's physical or mental condition" – which is referenced to by Cal. Probate Code § 2355(a), is so vague that mere feeding and hydration of the patient/conservatee satisfies its requirement, and also, neurochemistry can thus be used to put to death the patient/conservatee because of the wording "... or otherwise affect a patient's physical or mental condition," and thus Cal. Probate Code § 4615, "Health care," is also repugnant to the due process clause of the Fourteenth Amendment of the Constitution of the United States, since it condemns no act or omission (on the part of the nonrelative conservator). *Lanzetta, supra,* 306 U.S. at 453.

"... or otherwise affect a patient's physical or mental condition."

otherwise *adv* 1 : in a different way or manner
otherwise *pron* : something or anything else : something to the contrary
otherwise *adj* : DIFFERENT[2]

[2] WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 835-836 (Merriam-Webster Inc. 1984).

How Frances Was Put To Death

Under the auspices of Respondents Stanislaus County, Stanislaus County Public Guardian, Denise C. Hunt, Diane Guerra, Stacey Winklepleck, Judge A. Girolami, the Probate Court Judge, Tri Minh Pham, M.D., and Doctors Medical Center, Respondent S. Veia, registered nurse, did willfully, on October 12, 1999, at 0915 hours, administer to Frances Helen Latino, who was a human being, morphine, and said act was accomplished and perpetrated intravenously on, into, and upon Frances, without any affirmation, assent, or consent, coming from Frances, per the medical record(s); said battery occurred in room 457, fourth floor, at Doctors Medical Center, Modesto, California. In view of the fact that just one hour, and fifteen minutes before, at 0800 hours, it had been noted and entered into the medical records of Frances, blood pressure values of 87/55, (systolic/diastolic) the 0915 hours intravenous use of morphine, against the person of Frances, would (thus) have a high probability of terminating the life of Frances Helen Latino (the victim) SSN 358-10-1076; in view of the fact that it is widely known and accepted that morphine is a known respiratory depressant and a known venodilator, that can cause, in itself, a decrease in systemic blood pressure. At 1240 hours Frances' recorded blood pressure was now markedly lower, and by now was critically low, at 67/35 (systolic/diastolic). There is nothing in the records (of Frances) to indicate that there was any form of intervention, on the part of the Respondents, to raise Frances' blood pressure values (such as by administering to Frances dobutamine hydrochloride, norepinephrine, or dopamine). Frances died approximately 22 minutes later.

All of the Respondents, including Judge A. Girolami, the Probate Court Judge, appear to have been in acquiescence that Frances was to be put to death; there is nothing in the records (of Frances) to the contrary.

Frances used adenosine triphosphate to power her thinking neurons, her motor neurons, and to power all of her muscles, including her heart and diaphragm. Frances synthesized adenosine triphosphate in her mitochondria. When Frances was synthesizing adenosine triphosphate in her mitochondria she kept generating a stream of electrons (hydrogen ions). At first, Frances would place these electrons (hydrogen ions) on special molecular transporters that contained iron and copper, to "get rid of" these electrons. However, these iron and copper molecular transporters only provided shuttle service in her mitochondria. In order for Frances to successfully "power ground" her mitochondria (establish a complete circuit so she could keep making adenosine triphosphate) her electrons had to be transported to her long range carrier. Frances' long range carrier of her electrons (hydrogen ions) was her molecular oxygen coming in from her lungs and red blood cells, through her arteries and capillaries, that would meet with her short range carrier, in the membrane area of her mitochondria, where the transfer of these electrons took place (between these two carriers).

When systemic blood pressure gets too low, there will be less and less oxygen in the arterial blood even when there is nothing wrong with the lungs or the red blood cells; for example, when Frances' blood pressure was at 87/55 the (recorded) oxygen saturation of her arterial blood was at 96%, but when Frances' blood pressure was at 67/35 the (recorded) oxygen saturation of her arterial blood was only at 84%. Thus, when the Respondents willfully encouraged Frances' blood pressure to drop in the first place, by using the morphine, and then, when the Respondents willfully refused to reverse their Mens Rea as the "fruition" of their Actus Reus dropped Frances' blood pressure and oxygen saturation of her arterial blood, Frances was thus denied her Fourteenth Amendment due process of law right to *sufficiently transfer her electrons for the explicit*

purpose of sustaining her life, which she could (now) no longer do, *sufficiently, on account of her blood* pressure being so low. When Frances could no longer rapidly transfer her electrons (because the Respondents had driven down her blood pressure and *not* changed their proclivity) she could no longer synthesize adenosine triphosphate fast enough. The diminution of her supplies of adenosine triphosphate, which were fed into her ion pumps, that were installed in all of her thinking neurons, motor neurons, and all of her muscles, including her heart and diaphragm, thus caused her ion pumps to falter and fail since Frances' ion pumps were dependent on an input supply of adenosine triphosphate. When Frances' ion pumps lost their energy supply, her ion pumps could no longer maintain their normal and required ion concentration gradients; the loss of the ion gradients (the different types of ions no longer being in their proper positions relative to each other) thus caused Frances' heart to pump blood less and less aggressively and less and less efficiently, (because the neuromuscular junctions no longer had normal voltage values as a result of the different types of ions no longer being in their normal positions) and then, at approximately 1302 hours, Frances' heart came to a complete stop even though her heart, in itself, *was not at fault. See* Appendix, pages I, J, and K.

Neither the Fourteenth Amendment [1868] Section 1, of the United States Constitution, nor California's Penal Code § 189, Murder, allows for or permits Frances' life, or the life of any other person, to be terminated by another person or persons, by that other person or persons deliberately using knowledge of neurochemistry against a person (as Frances) in order for the other person or persons to terminate the life of their intended victim (as these Respondents did to Frances). Neither the Fourteenth Amendment [1868] Section 1, of the United States Constitution, nor California's Penal Code § 189, Murder, has any stated or implied neurochemistry clause, and thus, there is no "exclusionary rule," "pass-through,"

or loophole, that allows a person or persons to deliberately employ knowledge of neurochemistry against another person, as Frances, so as to end that person's life, as was done to Frances. Such acts are deliberate and premeditated, and are a manifestation of unmitigated murder. The refusal on the part of the Respondents to cancel the spurious restraining order against Frances' grandson, thus forcing Frances to die without a loved one at her side, is a manifestation of unmitigated malice. Neither Frances nor grandson Michael (this Petitioner) had given any instructions that Frances' death was to be encouraged or induced. Frances was thus murdered by the aforementioned Respondents.

The "Supremacy Clause," Article VI, Clause 2, of the United States Constitution, negates California's Probate Codes §§ 2355(a) and 4615.

Judicial Notice of the words of Frances Helen Latino is Motioned for per FED. RULES EVID. RULE 201(b)(2)(d)(e)(f), 28 U.S.C.:

(1) Frances spoke the English language;
(2) Frances could be readily understood by an English language speaking person of average intelligence and average hearing;
(3) Frances had volitional capacity;
(4) Frances' volitional capacity was in favor of, and in the direction of, her grandson, Michael (this Petitioner);
(5) Frances spoke the words of "Don't let no one get me from anywhere," to her grandson (this Petitioner), after she had been seized be the Respondents.

See Appendix, pages L (Rule 201) and M (the cassette tape Audio Exhibit).

See People v. Brust, 47 Cal.2d 776, 785, 306 P.2d 480, 484 (1957):

> Statements made by deceased to persons other than defendant tending to show existence of hostility toward defendant and to show provocation and

passion, are admissible and are not vulnerable to hearsay objection.

See People v. Brust, supra, and People v. Weatherford, 27 Cal.2d 401, 421, 164 P.2d 753, 764 (1945):

> The death of the declarant creates the necessity for resort to hearsay and the declarations, being those of a present existing state of mind, made in a natural manner and not under circumstances of suspicion, carry the probability of trustworthiness.

Why Should the U.S. Supreme Court hear this Case? (Reasons for Granting the Petition)

Hobbes writes that "It cannot be denied but that justice is a certain equality, that since we are all equal by nature, one should not arrogate more right to himself than he grants to another, unless he have fairly gotten it by compact."

> 'Before the names of just and unjust can have place there must be some coercive power to compel men equally to the performance of their covenants by the terror of some punishment greater than the benefit they expect by the breach of their covenant.' Without the sanction of force, covenants are 'but words and breath,' and of themselves 'have no force to oblige, contain, constrain, or protect any man.'
> – Hobbes

"Glaucon agrees with Thrasymachus that men would like to be strong enough to do anything they want to do without retaliation. They desire their own advantage and more than their share ...."

"Justice ... supposes mutual recognition of principles by the participants in a common practice." It is unfair "if one accepts benefit of practice but refuses to do his part in maintaining it." – Rawls

"Justice is the constant and perpetual will of rendering to each his right" – Roman Lawyers' Justinian Code

"Rendering to each *his own*" – Cicero
"*What is due* or *fitting*" – Plato[3]

CONCLUSION

Cal. Probate Codes §§ 2355(a) and 4615 are unconstitutional and are against the due process of law clause of the Fourteenth Amendment, Section 1, of the United States Constitution, because these two Codes *condemns no act or omission* on the part of the (nonrelative) conservator.

Cal. Probate Code § 4615 as structured with the words of "... or otherwise affect a patient's physical or mental condition" thus "allows" county public guardians in the State of California to murder any conservatee they want to murder who has become too much trouble for them to maintain, with the tacit approval of the probate court judges.

This Title 42 U.S.C. § 1983 claim is *not* only based upon the unwarranted and needless suffering and death of Frances Helen Latino, but is *also* based on the collateral destruction of family life and private care, that is the direct result of the overbreadth of Cal. Probate Codes §§ 2355(a) and 4615.

No medical entity and *no* state probate code is capable of reversing (on the patient or conservatee) theonomous hemodynamic retrograde, theonomous neuronal obliteration, nor the condition of theonomous enzymatic diminution, *which are the precursors of pressure ulcers!* The State of California has in place the structure of framing family and private care providers "under color of state law" for such aforementioned

[3] [PROFESSOR] OTTO A. BIRD, THE IDEA OF JUSTICE 53, 68-69, 70, 92, 122-123 (Institute For Philosophical Research 1967).

theonomous defects *(which are the precursors of pressure ulcers)* through the instrumentalities of Cal. Probate Codes §§ 2355(a) and 4615, and Cal. Penal Code § 368. All such charges are false. If the patient has the manifestation of pressure ulcers, said pressure ulcers are *never* premeditated; there is *no Mens Rea* and *no clear Actus Reus*; they are (rather) a medical condition (admittedly exacerbated by a *jackass medical profession* for not advising and for not having *all* age 70 and older bedridden patients on low air loss therapy *before* the outer skin breaks; "A stitch in time saves nine" – Frances Helen Latino). Because there is no Mens Rea and no clear Actus Reus the State of California and its counties, courts, public guardians, agents, employees, and private (backbiting) actors, can not arrogate to themselves any person who has a pressure ulcer(s). The pressure ulcer(s) *is a medical condition; not an act of crime, and not to be exploited or experimented on by the State or any of its designated agents!*

"As the possessor of natural rights, man is not subject to his society in all that he is and has."[4]

There is no proportionate equality to the populace (of the State of California) when those with pressure ulcers are seized by agents/employees of the State, but others of the populace with equal or greater afflictions (such as having cancer or a victim of a bloody traffic accident) are not seized by the State.

As the possessor of natural rights, woman is not subject to her society in all that she is and has.

Frances was already, in her own home, on low air loss therapy, and she had normal body weight; (female, approximately 128 pounds, 5 feet, 3 inches in height) there was nothing else that could be done towards Frances of a kind and practical nature.

[4] [PROFESSOR] OTTO A. BIRD, THE IDEA OF JUSTICE 137 (Institute For Philosophical Research 1967).

The death of Frances Helen Latino, SSN 358-10-1076, was premeditated.

Petitioner moves for the Court to hear this case; Petitioner moves for murder charges and "Crimes against elder" charges against all Respondents including the probate court Judge (Cal. Penal Codes §§ 189 and 368); Petitioner moves for a criminal trial and a substantial punitive award; Petitioner moves for a Title 42 U.S.C. § 1983 civil action trial: Triable issues of material fact:

(1) Would the Respondents (Defendants) through due diligence know that an unchecked drop of Frances' blood pressure would produce her death?

(2) Was any effort made on the part of the Respondents (Defendants) to in fact drive down Frances' blood pressure, such as by using morphine?

(3) Is there any evidence in Frances' medical records that Frances had (in fact) given the Respondents (Defendants) fair warning that she *was* in peril of losing her life, that would thus indicate that the Respondents (Defendants) *had* conspicuous awareness of her condition of said distress, such as any entry (in Frances' medical records) of low blood pressure and/or low oxygen content in her arterial blood?

(4) Did the Respondents (Defendants) have the faculty, power, or an innate ability to act in another direction towards Frances – for example raise her blood pressure?

(5) In view of the fact that the medical records of Frances fail to establish and fail to delineate just exactly *what* anatomical system or systems did Michael Vincent Latino damage or undermine or impair on his grandmother, Frances, and the same with the criminal charge, was there (thus) a conspiracy against the grandson (this Petitioner) by the Respondents to destroy his family life and mutual association with his grandmother, and to destroy his occupation of caring for his grandmother in their home?

Cal. Penal Code § 368(f) states "Any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment in the state prison for two, three, or four years."

The Audio Exhibit makes it clear that Frances met (meets) the False Imprisonment test; these Respondents never had any "privilege" to conduct any medical experiments on, or in, the body of Frances; said body being under the Fourteenth Amendment due process of law clause and equal protection of the laws clause.

See the Constitution of the United States, Fourth Amendment [1791]:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, ...

"Shall not be violated" means shall not be violated.

The word "Any" of Cal. Penal Code § 368(f) *exempts no one from prosecution;* not even a probate court judge, not even a court investigator, not even a public guardian, nor members of the sheriff's department, nor any private actor! All these Respondents have made themselves liable because of their actions against Frances, and her grandson.

Cal. Penal Code § 189 states in part: "To prove the killing was 'deliberate and premeditated,' it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act."

Petitioner moves that the U.S. Supreme Court annuls Cal. Probate Codes §§ 2355(a) and 4615. *See* Appendix, pages N and O.

Petitioner moves for attorney fees and costs (42 U.S.C.S. § 1988).

Note letter from Expert Witness. *See* Appendix, page P.

Thank you.

Sincerely, Michael Vincent Latino

August 6, 2004

Michael Vincent Latino
Pro Se

FILED

ORIGINAL

JUN 21 2004

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: MICHAEL VINCENT LATINO.
MICHAEL VINCENT LATINO,
Petitioner,
v.
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA,
Respondent,
STANISLAUS COUNTY,
Real Party in Interest.

No. 04-71220
D.C. No. CV-00-06745-LJO
Eastern District of California,
Fresno

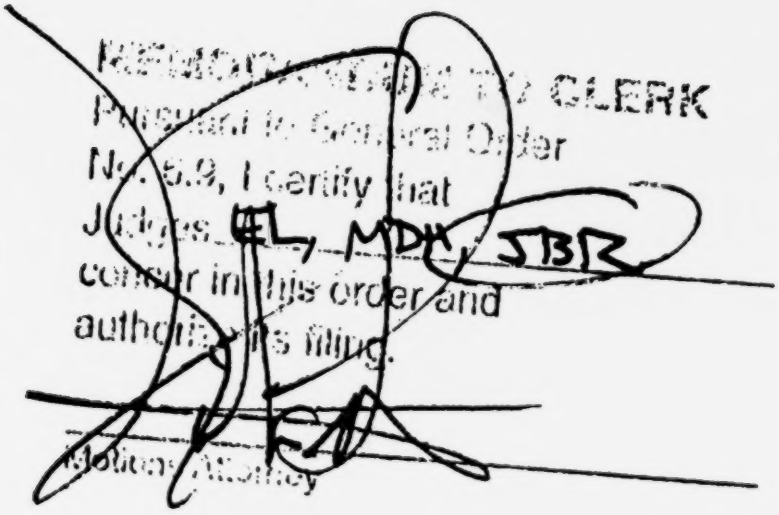
ORDER

Before: LEAVY, THOMAS and FISHER, Circuit Judges

Petitioner has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. United States Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied.

04-71220

No motions for reconsideration, modification, or clarification of this order shall be filed or entertained.


CLERK
Pursuant to General Order
No. 5.2, I certify that
Judges EL, MDK, JBR
concur in this order and
authorize its filing.

FILED

2003 FEB 11 A 9:13

CLERK, US DIST. COURT
EASTERN DIST. OF CALIF
AT FRESNO
BY _____
DEPUTY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THOMAS LATINO, et al.,
Plaintiffs,
vs.
STANISLAUS COUNTY, et al.,
Defendants.
_____/

CASE NO. CV-F-00-6745 LJO
ORDER ON MICHAEL VINCENT LATINO'S POST-DISMISSAL MOTIONS

INTRODUCTION

In this dismissed 42 U.S.C. § 1983 action, plaintiff Michael Vincent Latino ("Mr. Latino") has filed papers purporting to be motions. For the reasons discussed below, this Court is unable to grant Mr. Latino relief on his papers.

BACKGROUND

On October 12, 2000, Mr. Latino and his brother, Thomas Latino, filed this action arising from their grandmother's removal from her home shortly before her death. Mr. Latino and his brother named as defendants Stanislaus County, several Stanislaus County public health and law enforcement personnel, and several medical providers. In short, Mr. Latino and his brother alleged defendants wrongfully removed their

grandmother to violate constitutional rights and to hasten her death.

This Court's June 18, 2002 decision granted summary judgment as to certain defendants and summary adjudication as to certain claims and damages. The decision did not dispose of the action in its entirety. On August 13, 2002, the remaining defendants filed their papers to seek summary judgment as to the remaining claims. In early October 2002, the parties' counsel confirmed settlement had been reached. On October 29, 2002, based on the stipulation of the parties' counsel, this Court dismissed this action "in its entirety with prejudice."

On February 10, 2003, Mr. Latino filed papers entitled "Plaintiff's Motion to Motion Out Stephen Solano, Plaintiff's Motion for Return of Retainer; Plaintiff's Motion to Motion out Thomas Latino" and "Plaintff's Motion to Vacate the Motion for Summary Judgment; Motion for De Novo; Motion for Prosecutorial Involvement; Supporting Points and Authorities." Mr. Latino's papers are largely unintelligible but appear to criticize: (1) the handling of this action by his attorney Stephen Solano; and (2) Thomas Latino's selection as administrator of the grandmother's estate. The papers request no cognizable relief. The papers include indecipherable statements, including Mr. Latino "encumbers the Motion For Summary Judgment with a claim of Equitable Estoppel" and the "motive to kill are the defendant's [sic] hatred of grandson Michael who dared to challenge them, and the fact that Frances became worthless to the defendants, and a great burden to the defendants, as Frances deteriorated after she was removed from Michael's care." Mr. Latino presented similar statements to this Court in his August 19, 2002 letter which was returned to him.

DISCUSSION

Pursuant to the stipulation of the parties' counsel, this action has been dismissed with prejudice. A voluntary dismissal "with prejudice" operates as an

adjudication on the merits and is granted res judicata effect like a judgment after trial. *See Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505, 121, S.Ct. 1021, 1026 (2001) (" 'with prejudice' is an acceptable form of shorthand for 'an adjudication upon the merits' "); *Larken, Inc. v. Wray,* 189 F.3d 729, 732 (8th Cir. 1999). A dismissal with prejudice may bar relitigation of issues actually adjudicated prior to dismissal. *See Dean V. Riser,* 240 F. 3d 505, 510, n. 1 (5th Cir. 2001).

Here, the dismissal with prejudice renders this Court unable to examine issues adjudicated prior to dismissal. Moreover, this Court is not in a position to address Mr. Latino's concerns regarding his counsel or his counsel's continuing representation of Mr. Latino. *See* Cal. Rules of Prof. Conduct, Rule 3-700. As for the selection of an estate's administrator, a state probate court, not a federal court, is empowered to address such appointment. *See* Cal. Prob. Code, §§ 8400, 8405, 8420, 8440, 8460.

CONCLUSION AND ORDER

For the reasons discussed above, this Court grants Mr. Latino no relief on his papers filed February 10, 2003. This Court **ADMONISHES** Mr. Latino to refrain from filing meritless papers with this Court in light of the dismissal of this action and the fact that Mr. Latino has an attorney of record in this action.

This Court's clerk is directed to serve a copy of this order on Michael Vincent Latino, 4212 Orchard Hills Drive, Salida, CA 95368.

IT IS SO ORDERED.

DATED: Febmy 10, 2003

LAWRENCE J. O'NEILL
UNITED STATES MAGISTRATE JUDGE

Rule 60. Relief From Judgment or Order

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, ... or to set aside a judgment for fraud upon the court. ....

§ 6103.5. Written offers of settlement; required communication to client; discovery

(a) A member of the State Bar shall promptly communicate to the member's client all amounts, terms, and conditions of any written offer of settlement made by or on behalf of an opposing party. As used in this section, "client" includes any person employing the member of the State Bar who possesses the authority to accept an offer of settlement, or in a class action, who is a representative of the class.

STANISLAUS COUNTY SUPERIOR COURT
STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

vs.

MICHAEL VINCENT LATINO
(DOB: 5/3/50)
(BAILED)
DEFENDANT.
No. 367663

State of California)
County of Stanislaus) ss.

FILED
00 SEP -8 AM 10: 34
MICHAEL A. TOZZI
CLERK OF SUPERIOR COURT
DEPUTY

SO S99-22079
Booking No. 480000

COMPLAINT -- CRIMINAL

On September 8, 1999, G. MCDANIEL, Stanislaus County Sheriff's Department, complains and alleges, upon information and belief, that said defendant(s) did commit the following crime(s) in the County of Stanislaus, State of California.

On or about May 1, 1999, defendant(s) did commit a Felony, ENDANGERMENT OF HEALTH OF ELDER OR DEPENDENT ADULT, violation of Section 368(b) (1) of the California Penal Code, in that the defendant(s) did willfully, unlawfully and feloniously under circumstances or conditions other than those likely to produce great bodily harm or death, cause and permit **FRANCIA LATINO**, an elder or dependent adult, with knowledge tha[t] she was an elder adult, to suffer, and did inflict on said elder or dependent adult unjustifiable physical pain or mental suffering.

All of which is contrary to law in such cases made *and provided, and against the peace and dignity* of the People of the State of California.

Said Complaint therefore prays that a warrant be issued for the arrest of said defendant(s) and that said defendant(s) be dealt with according to law.

I certify under penalty of perjury, at Modesto, California, that the foregoing is true and correct.

Dated: 9-8-99

G. McDaniel

Complainant

PATIENT NAME	BED#
LATINO, FRANCES H	4N 457A
ACCOUNT#	AGE
1319248	095Y
SEX	WEIGHT
F	58.50KG
BSA	MEDICAL RECORD #
1.68	000521739

ALLERGIES
NO KNOWN DRUG ALLERGIES

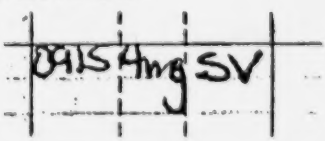
DOSE PERIOD
00:01 10/12/99 THRU 24:00 10/12/99

DIAGNOSIS
CHF, PNEUMONIA

MEDICATION ADMINISTRATION TIMES
0001-0729 | 0730-1600 | 1601-2400

....

MORPHINE SCALE PRN
1EA Q 2H PRN INTRAVENOUS
DOSE 2-4MG MED#53
START:10/11/99 8:05



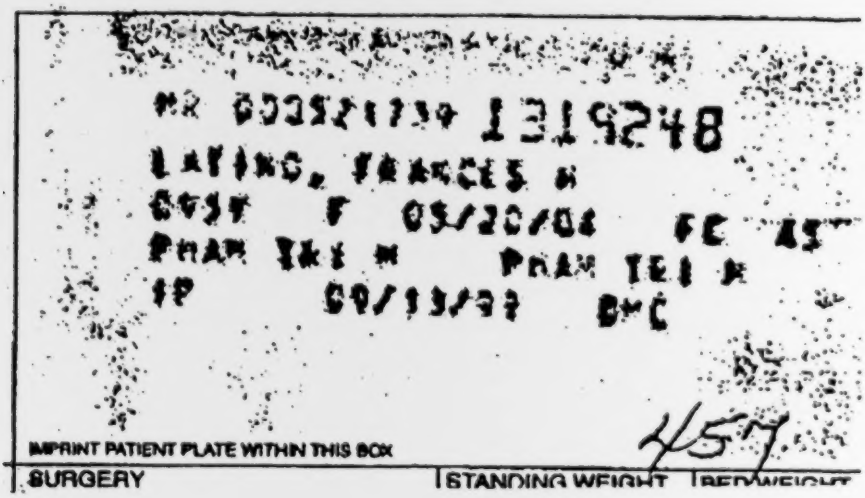
PRINTED BY: JUDY AMARAL
(INITIAL) DATE 11/25/99 (INITIAL)
(INITIAL) (INITIAL)

DOCTORS MEDICAL CENTER

DOCTORS MEDICAL CENTER
1441 FLORIDA AVENUE
MODESTO, CA 95350
(209) 578-1211

NURSES NOTES

PATIENT CARE RECORD



DATE 10/29/99	DIAGNOSIS CHF PNA			
TIME	24	04	1000	1240
TEMP	36.2	35.9	35.1	35.1
PULSE	135	112	101	79
RESP	38	48	32	44
BP	113/51	101/52	81/55	127/35
Sa O_2	96%	96%	96%	84%
O_2	6L FM	6L FM	6L Humidex	6L NC
			INTAKE	TIME PRES UP

DOCTORS MEDICAL CENTER
1441 Florida Avenue
P.O. Box 4138
Modesto, CA 95352
209/578-1211
DOB: 05/20/04

PT: LATINO, FRANCES H
MR#: 521739 RM: 0996, E, P
PT: 1
ADM: 09/13/99 DIS:
ACCT: 1319248 AUTH ID: 211
101538 PHAM

On October 12, 1999, the patient suddenly had cardiac arrest and expired.

The patient was transported to the mortuary.

TP:hum
D. 11-26-99
T. 11-26-99
JOB #:107396

TRI MINH PHAM, M.D.
EA

ARTICLE II. JUDICIAL NOTICE

Rule

201. Judicial Notice of Adjudicative Facts.

Rule 201. Judicial Notice of Adjudicative Facts

(a) Scope of rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary. A court may take judicial notice, whether requested or not.

(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

AUDIO EXHIBIT

Frances Latino; Michael Latino:
August 15-22, 1999.
13 Minutes in length

§ 2355. Medical treatment of conservatee adjudicated to lack capacity to make health care decisions

(a) If the conservatee has been adjudicated to lack the capacity to make health care decisions, the conservator has the exclusive authority to make health care decisions for the conservatee that the conservator in good faith based on medical advice determines to be necessary. The conservator shall make health care decisions for the conservatee in accordance with the conservatee's individual health care instructions, if any, and other wishes to the extent known to the conservator. Otherwise, the conservator shall make the decision in accordance with the conservator's determination of the conservatee's best interest. In determining the conservatee's best interest, the conservator shall consider the conservatee's personal values to the extent known to the conservator. The conservator may require the conservatee to receive the health care, whether or not the conservatee objects. In this case, the health care decision of the conservator alone is sufficient and no person is liable because the health care is administered to the conservatee without the conservatee's consent. For the purposes of this subdivision, "health care" and "health care decision" have the meanings provided in Sections 4615 and 4617, respectively.

(b) ....

(Stats. 1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1999, c. 658 (A.B.891), § 12, operative July 1, 2000.)

§ 4615. Health care

"Health care" means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a patient's physical or mental condition.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

O

MARTIN TERPLAN, M.D., F.A.C.P.
490 POST STREET
SAN FRANCISCO 94102

(415) 362-6398

May 20, 2003

To: Justices of the 9th Circuit

Re: Michael Latino vs Stanislaus County et al

I have reviewed various medical records concerning Frances Latino's medical problem between July 1999 and her death October 12, 1999. In my opinion, she was bedridden secondary to strokes and was receiving appropriate home care from her grandson, Michael Latino, who held a power-of-attorney and had been providing care full-time since July 1994. In August 1999 a conservatorship was forced upon Mrs. Latino against her will and the will of Michael Latino. Mr. Latino was even charged with elder abuse August 23, 1999, in my opinion, inappropriately, and the charges were finally dropped May 4, 2000. As a consequence, Mrs. Latino was kept from all family relatives from August 24 to September 15, 1999. Removed from Mr. Latino's care, Mrs. Latino apparently worsened.

Mr. Latino feels, with what appears to be considerable justification, that Stanislaus County, various private nurses and others made false charges against him, violated Mrs. Latino's body unnecessarily, provided inappropriate care, and ultimately hastened Mrs. Latino's death.

Martin Terplan, M.D.
Clinical Professor of Medicine
University of California, San Francisco

MT:1t